

C46dcarl

Trial

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 ARTURO CARAVANTES and  
4 FRANCISCO SOTARRIBA,

Plaintiffs

v.

09 Civ. 7821 (RPP)

5 53RD STREET PARTNERS, LLC  
6 d/b/a REMI RESTAURANT and  
7 OSCAR VELANDIA,

Defendants

-----x

New York, N.Y.  
April 6 2012  
9:35 a.m.

Before:

HON. ROBERT P. PATTERSON, JR.,

District Judge

APPEARANCES

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- also present -

CARLOS CRUZ, LILIANA HALAC - Spanish Interpreters

RANDALL CARTER - Plaintiff AV Tech

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1 (Trial resumed)

2 THE COURT: Please be seated.

3 Please recall the witness.

4 MR. PARKER: Apparently the witness is not here yet,  
5 your Honor.

6 THE COURT: Oh, all right.

7 MR. PARKER: He certainly is expected at 9:30, but he  
8 may have been delayed.

9 THE COURT: He may have been relying on my being late  
10 because I have usually been about five or ten minutes later.

11 THE CLERK: The witness is on line.

12 THE COURT: Oh, yes. Today is immigration day.  
13 Normally it is Friday and the lines get terrible out there. So  
14 we may have to pull him out of the line.

15 Can you remember what he looks like?

16 THE CLERK: Yes.

17 THE COURT: OK.

18 (Pause)

19 MR. PARKER: Could I address one trial issue while we  
20 are waiting?

21 THE COURT: Sure.

22 MR. DELANEY: I can do some housekeeping, too, so.

23 THE COURT: Sure.

24 MR. PARKER: Your Honor, as you know, there is a claim  
25 in the case by the plaintiffs for punitive damages, and we had

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1 not discussed this previously, but I wanted to inquire of the  
2 Court as to whether in the typical case, at least in my  
3 experience and in the case law, punitive damages, any evidence  
4 of financial worth or financial evidence is put on at a later  
5 date after the fact finder -- in the event the fact finder  
6 decides that a punitive damage award is --

7 THE COURT: Yes. What I do in a jury case is I defer  
8 the issue of the amount of those punitive damages, but the jury  
9 makes a finding that they want to award punitive damages; in  
10 other words, that the test has been met, but we defer the issue  
11 of what the punitive damages should be, the amount, until after  
12 they've heard evidence from the defendants as to assets,  
13 generally financial information. I don't know if that applies  
14 here; it is a nonjury case. But I have never -- I don't think  
15 I've tried a nonjury case with punitive damages, as generally  
16 they're asked for when you have a jury.

17 Do you want me to look into that?

18 MR. PARKER: Yes. I'm not prepared today to introduce  
19 that evidence, although the witness I would do it through will  
20 be testifying today. But I could, if necessary, present that  
21 evidence on Monday by both defendants. So that is why I want  
22 to inquire of the Court as to whether there is a preference to  
23 put the evidence in now or later.

24 THE COURT: Let me hear from plaintiff.

25 MR. DELANEY: Yes. I'm happy to wait until your Honor

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1 decides whether you want the evidence in --

2 THE COURT: I would rather not --

3 MR. DELANEY: Have to decide it?

4 THE COURT: I would rather write one opinion rather  
5 than two.

6 MR. DELANEY: I think it would be more efficient to  
7 put all the relevant evidence in.

8 THE COURT: Findings of fact and conclusions of law.  
9 I think it would be more efficient to do it in the way that  
10 Mr. Parker suggests.

11 MR. DELANEY: Put it in on Monday, you mean?

12 THE COURT: Yes.

13 MR. DELANEY: I am OK with that.

14 THE COURT: We can use -- we have a gap, maybe, in  
15 time.

16 MR. PARKER: Yes.

17 MR. DELANEY: And I think that answered one of my  
18 questions, which was whether we should put our damages  
19 calculations into my summation so it sounds like the answer to  
20 that is yes as well.

21 THE COURT: Yes. Of course, you would have a chance  
22 to cross-examine about any financial information that is put  
23 in, or make any points you wanted to on that issue.

24 MR. DELANEY: OK. While we are waiting for the  
25 witness --

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1 THE COURT: Or contrary evidence, if possible.

2 MR. DELANEY: While we are waiting for the witness,  
3 why don't I mark a few exhibits for identification. They are  
4 the excerpts of the deposition transcripts that were read into  
5 the record.

6 THE COURT: Sure.

7 MR. DELANEY: So I'll hand up three exhibits marked  
8 for identification.

9 (Hanging)

10 THE COURT: 326, 327, 328, for identification, are  
11 excerpts from Velandia deposition of his -- how would you  
12 describe these Plaintiffs' Exhibits, 26, 27 and 28?

13 MR. DELANEY: Yes, your Honor. So Plaintiffs' Exhibit  
14 326 is an excerpt from Mr. Velandia's deposition, and Exhibit  
15 326 is page 69, line 19, through 70, line 9.

16 THE COURT: All right.

17 MR. DELANEY: Plaintiffs' Exhibit 327 is again an  
18 excerpt from Mr. Velandia's deposition, page 71, line 5,  
19 through 73, line 4.

20 THE COURT: All right.

21 MR. DELANEY: And Plaintiffs' Exhibit 328 is an  
22 excerpt from Mr. Solis' deposition, and, for the record, this  
23 was the video excerpt that was played.

24 THE COURT: Yes.

25 MR. DELANEY: And Plaintiffs' Exhibit 328 is page 63,

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1 line 6, through page 64, line 6.

2 So plaintiffs move 326, 327 and 328 into the record,  
3 for identification.

4 THE COURT: 326, '27 and '28, any objection to them?

5 MR. PARKER: Your Honor, I just am seeing these for  
6 the first time, and I'm not sure that I agree with -- just may  
7 I have a chance to look at them?

8 THE COURT: Sure. Of course. We are waiting for the  
9 witness.

10 THE CLERK: He wasn't downstairs.

11 THE COURT: He wasn't downstairs.

12 (Pause)

13 MR. DELANEY: Your Honor, while we are waiting for  
14 Mr. Parker, it was just pointed out to me that Plaintiffs'  
15 Exhibit 328 has the wrong caption on top of the transcript. It  
16 was likely a court reporter error at the time of the deposition  
17 that neither I nor defendants' counsel caught.

18 So the caption on the top of the Plaintiffs' 328 says  
19 "U.S. Bankruptcy Court, New York, Lehman Brothers v. J.P.  
20 Morgan," but both myself and Mr. Parker agree that this is in  
21 fact Mr. Solis' deposition transcript. There was just an error  
22 in the caption when the court reporter transcribed it -- the  
23 court reporter at the deposition, of course.

24 THE COURT: Lehman Brothers. Boy.

25 MR. DELANEY: And, also, it says, "Final - highly

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1 confidential" on it, but neither I nor defense counsel assert  
2 that this transcript is confidential, highly or otherwise.

3 THE COURT: All right. I will just cross those out.

4 It also says Thomas Fontana.

5 MR. DELANEY: Yes.

6 THE COURT: That should be crossed, too?

7 MR. DELANEY: Yes, sir. As well as the date, I  
8 believe.

9 THE COURT: It makes me curious but I think my  
10 curiosity can be contained.

11 MR. DELANEY: Yes, your Honor.

12 So 328, the date should also be struck. The date as  
13 it reads on the excerpt says May 4, 2011. The date of  
14 Mr. Solis' deposition was in fact April 27, 2011.

15 We apologize for any confusion.

16 THE COURT: April 27th?

17 MR. DELANEY: 2011.

18 THE COURT: OK.

19 MR. PARKER: Your Honor, I reviewed those exhibits,  
20 P-326, '27 and '28. I agree, they are what was read into the  
21 record. So I have no objection.

22 THE COURT: No objection. All right.

23 Then they are admitted in evidence. 326, 327, 328 are  
24 admitted in evidence.

25 (Plaintiffs' Exhibits 326, 327, 328 received in

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1 evidence)

2 THE COURT: I guess we ought to call the next witness.

3 I think your client just walked out the door,

4 Mr. Parker.

5 MR. PARKER: Yes. I will just go out.

6 THE COURT: All right.

7 (Pause)

8 MR. PARKER: Your Honor, we are trying to reach  
9 Mr. Ortiz by calling a cell phone number, and, if not, then I  
10 could put somebody else on the stand --

11 THE COURT: Sure.

12 MR. PARKER: -- if we can't reach him.

13 THE COURT: Well, if he isn't going to be available in  
14 the next few minutes.

15 MR. PARKER: Yes. OK.

16 THE COURT: Someone is calling him, then.

17 All right. Then I will take a break and go upstairs  
18 for a second.

19 MR. PARKER: Thank you.

20 (Recess)

21 JOSE LUIS ORTIZ,

22 Resumed, and testified further (through the Interpreter)  
23 as follows:

24 THE COURT: All right. Please be seated.

25 Mr. Solis.



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1 THE WITNESS: No. Ortiz.

2 THE COURT: I'm sorry. Mr. Ortiz, you are reminded  
3 you are still under oath.

4 THE WITNESS: Yes.

5 THE COURT: I do that as a matter of court procedure  
6 any day a witness takes the stand on a succeeding day.

7 THE WITNESS: Thank you.

8 THE COURT: All right. Go ahead.

9 CROSS-EXAMINATION (through the Interpreter)

10 BY MR. DELANEY:

11 Q. Mr. Ortiz, there was new ownership in Remi that took over  
12 in April 2005, correct?

13 A. Yes.

14 Q. And Mr. Francesco Pistorio was the new general manager  
15 starting in April 2005?

16 A. Yes.

17 Q. He made you a bartender?

18 A. Yes.

19 Q. And you worked with Mr. Velandia at this time, correct?

20 A. Yes.

21 Q. And he was a waiter?

22 A. Yes.

23 Q. He was a waiter April 2005?

24 A. Yes.

25 Q. Now, in those first two months when the new ownership took

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Ortiz - cross

1 over, Mr. Pistorio started giving Mr. Velandia more  
2 responsibility at the restaurant, correct?

3 A. When saw responsibilities, I don't know. I know that he  
4 wanted Oscar to help with certain things, but as far as  
5 responsibilities, I don't know.

6 Q. Well, at your deposition you testified that Mr. Velandia  
7 started getting more responsibilities. Do you recall that?

8 A. Yes.

9 Q. It is true that Mr. Velandia started getting more  
10 responsibility in those first few months?

11 A. He helped with certain things. I suppose you could refer  
12 to that as responsibilities.

13 Q. And had Mr. Pistorio started giving him more  
14 responsibility?

15 A. What I am aware of is that at the parties he began to  
16 assist more. He was placed in charge of the parties. That I  
17 know.

18 Q. Mr. Pistorio was the general manager at the restaurant  
19 under the new ownership, correct?

20 A. Yes.

21 Q. He was in charge of the restaurant?

22 A. Yes.

23 Q. So if somebody at the restaurant was given more  
24 responsibility, Mr. Pistorio would have given him?

25 A. Yes.

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Ortiz - cross

1 Q. So if Mr. Velandia got more responsibility at the  
2 restaurant, as you testified, then Mr. Pistorio would have  
3 given him more responsibility.

4 A. Yes.

5 Q. Now, Mr. Pistorio eventually promoted Mr. Velandia to  
6 assistant manager, correct?

7 A. Yes.

8 Q. And Mr. Pistorio announced at a staff meeting that  
9 Mr. Velandia would become the assistant manager?

10 A. Not completely as an assistant, but Mr. Pistorio did say  
11 that Mr. Velandia would be helping to close the restaurant at  
12 certain times.

13 Q. Again, at your deposition, didn't you testify that  
14 Mr. Pistorio announced at a meeting that Mr. Velandia would  
15 become the assistant manager?

16 A. I remember once that he announced that he was going to be  
17 assisting not as the manager but that he would be closing.

18 Q. Let me read you a portion -- I will hand you your  
19 deposition and see if it refreshes your recollection.

20 A. OK.

21 MR. DELANEY: Permission to approach, your Honor?

22 THE COURT: Yes. All right.

23 Page and line?

24 BY MR. DELANEY:

25 Q. Mr. Ortiz, I am going to ask you to turn to page 41, line

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Ortiz - cross

1 3, of your deposition.

2 THE COURT: First let's establish when the deposition  
3 was taken, etc.

4 MR. DELANEY: Yes, your Honor.

5 Q. Mr. Ortiz, before I read this to you, do you recall being  
6 deposed in this case?

7 A. Yes.

8 Q. And you recall that you were under oath when you gave the  
9 deposition?

10 A. Yes.

11 Q. And you told the truth at your deposition?

12 A. Yes.

13 Q. And the transcript I just handed you, the binder with the  
14 transcript, do you recognize this as your deposition  
15 transcript?

16 A. Yes.

17 Q. So, again, turning to page 41, line 3 --

18 THE COURT: What date was this taken? Do you remember  
19 what date you had your deposition taken?

20 THE WITNESS: If I'm not mistaken, I remember either  
21 August or September of 2010.

22 Q. If I told you it was August 12, 2010, does that refresh  
23 your recollection?

24 A. Perhaps not, but....

25 Q. If you turn to the first page of your deposition.

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Ortiz - cross

1 THE COURT: That's all right.

2 MR. DELANEY: Are you OK? All right.

3 Q. Turn to page 41, Mr. Ortiz.

4 41, line 3, I'm going to read this to you:

5 "Q From September or October of 2005 until you left, was  
6 Mr. Velandia an assistant manager?

7 "A Yes.

8 "Q How do you know Mr. Velandia became an assistant manager?

9 "A Because Francisco Pistorio, the general manager, in a  
10 meeting had it be known."

11 Was that your testimony at your deposition, Mr. Ortiz?

12 A. Yes.

13 THE COURT: Were you asked those questions and did you  
14 give those answers at your deposition?

15 THE WITNESS: Yes.

16 BY MR. DELANEY:

17 Q. And does that refresh your recollection that Mr. Pistorio  
18 announced at a meeting that Mr. Velandia was to become the  
19 assistant manager?

20 A. Yes.

21 Q. Now, once Mr. Velandia became assistant manager, was one of  
22 his roles to close up the restaurant every night?

23 A. Yes.

24 Q. And was one of his roles to make sure that the busboys did  
25 their jobs?

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Ortiz - cross

1 A. Yes.

2 Q. And was one of his roles to make sure the food runners were  
3 doing their jobs?

4 A. Yes.

5 Q. And Mr. Pistorio, the general manager, there were times he  
6 was not at the restaurant, correct?

7 A. Yes. Maybe like one day out of the week.

8 Q. And when Mr. Pistorio was not present in the restaurant, it  
9 was Mr. Velandia's job to manage the restaurant, correct?

10 A. Yes.

11 Q. Now, when you -- you worked at Remi Restaurant starting in  
12 2000, correct?

13 A. Yes.

14 Q. And you worked there until 2009?

15 A. Yes.

16 Q. And when the new owners took over in April 2005, you didn't  
17 receive a handbook, an employee handbook from them?

18 Let me strike that. It is a bad question.

19 When the new owners took over in April 2005, you  
20 didn't receive an employee handbook from the new management,  
21 did you?

22 A. No.

23 Q. And you never -- under the new management, you never  
24 received any training about sexual harassment, did you?

25 A. No.

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Ortiz - cross

1 Q. And Mr. Pistorio never told you how to complain about  
2 sexual harassment at the restaurant?

3 A. He made the comment that if we had any problem, that we  
4 could do that.

5 Q. But he didn't specifically say if you have a problem with  
6 sexual harassment, here's how to complain?

7 A. No.

8 THE COURT: When was this? What time period are we  
9 talking about?

10 THE WITNESS: Maybe the rest of the year in 2005,  
11 after April, and part of 2006.

12 BY MR. DELANEY:

13 Q. And Mr. Pistorio left the restaurant in May 2008?

14 A. Yes.

15 Q. And so at no point between April 2005 and May 2008 did  
16 Mr. Pistorio tell you specifically how to complain about sexual  
17 harassment?

18 A. Could you repeat the question?

19 THE COURT: Yes. I will have the question read back.

20 (Question read)

21 A. Yes. Perhaps sometime in 2006, close to the area where you  
22 punch in, they put posters up about that.

23 Q. Do you specifically recall they put posters up about sexual  
24 harassment?

25 A. Yes.

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Ortiz - cross

1 Q. And what did they say?

2 A. I never read them.

3 Q. If you never read them, how do you know they were about  
4 sexual harassment?

5 A. Because I read the first words that were on it. It was in  
6 red lettering about sexual harassment.

7 Q. And from -- you were made a bartender after April 2005,  
8 correct?

9 A. Yes.

10 Q. And you were still a bartender in August 2008?

11 A. No.

12 Q. You became a waiter in August 2008?

13 A. I'm sorry. I still was a bartender after 2008, but after  
14 that Pistorio made me a waiter.

15 Q. What month did Mr. Pistorio make you a waiter?

16 A. It actually wasn't Mr. Pistorio; it was after Pistorio  
17 left, when Carlo Maggi came this, I asked him if I could work  
18 as a waiter.

19 Q. I believe yesterday you testified that it was December 2008  
20 that you were made a waiter, is that correct?

21 A. No.

22 Q. When did Mr. Maggi make you a waiter?

23 A. When Mr. Maggi came in in July, I began to ask for the  
24 opportunity to work as a waiter, and he began to assign me some  
25 shifts up until about September, when I finally started to work



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Ortiz - cross

1 as a waiter full-time.

2 Q. While you were working as a bartender, you spent most of  
3 your time in the bar in the restaurant, correct?

4 A. Yes.

5 Q. And the bar is at the front of the restaurant, by the entry  
6 doors?

7 A. Yes.

8 Q. And you cannot see the coffee station from the bar, can  
9 you?

10 A. No.

11 Q. And from the bar you could see the front server station,  
12 correct?

13 A. No, you can't see that there.

14 Q. There is a computer right beside the bar, correct?

15 A. Yes.

16 Q. And the waiters would use that station to enter orders?

17 A. Yes.

18 Q. So if I call that the front server station, you'll know  
19 what I am referring to?

20 A. OK. Yes.

21 Q. And there were two more server stations on the dining room  
22 floor, correct?

23 A. Yes.

24 Q. And there was one in the middle of the dining room?

25 A. Yes.

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Ortiz - cross

1 Q. And if I call that the middle server station, you will know  
2 what I'm referring to?

3 A. Yes.

4 Q. There is one in the back of the dining room, correct?

5 A. Yes.

6 Q. And if I call that the back server station, you'll know  
7 what I'm referring to?

8 A. Yes.

9 Q. Now, from the bar you could not see inside the middle  
10 server station, could you?

11 A. No, you cannot.

12 Q. And from the bar you could not see inside the back server  
13 station?

14 A. Of course.

15 Q. To be clear --

16 A. Yes.

17 Q. I'm sorry. You could not see the back?

18 A. No, you can't see inside.

19 Q. And you never witnessed Mr. Velandia performing oral sex on  
20 Mr. Caravantes?

21 A. No.

22 Q. And you never witnessed him having anal sex?

23 A. No.

24 Q. So you can't provide any testimony whether Mr. Caravantes  
25 welcomed this conduct?

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Ortiz - cross

1 A. Well, jokingly we always played like that.

2 Q. Oral sex wasn't part of the joke, was it?

3 A. No. But he would simulate that when Oscar would close the  
4 front door.

5 Q. But actually performing oral sex was not part of the joke?

6 A. I don't understand the question.

7 Q. I'll move on.

8 You worked at Remi for nine years?

9 A. Yes.

10 Q. And now you run a flower shop?

11 A. Yes.

12 Q. And as part of your business running the flower shop, do  
13 you provide flowers to Remi?

14 A. Yes.

15 Q. And you became friends with Mr. Velandia before you started  
16 working at Remi?

17 A. Yes.

18 Q. And after you started working at Remi, did you go to bars  
19 with Mr. Velandia?

20 A. Yes.

21 Q. Did you go out almost every weekend with him to a bar?

22 A. I don't remember if it was every week but we did go out  
23 constantly.

24 Q. And you met Mr. Velandia's family?

25 A. Yes.

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Ortiz - cross

1 Q. And you're still friends with Mr. Velandia?

2 A. Not as close as before, but, yes, we still continue to be  
3 friends.

4 Q. And at one point during this case Mr. Velandia specifically  
5 asked you certain -- strike that.

6 At one point during this case Mr. Velandia told you  
7 that he needed a witness to testify, correct?

8 A. Yes.

9 Q. He asked you to be a witness?

10 A. Yes.

11 MR. DELANEY: I have no further questions, your Honor.

12 THE COURT: All right. Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. PARKER:

15 Q. Mr. Ortiz, when the deposition was shown to you earlier and  
16 your testimony from your deposition where you had said that  
17 Mr. Pistorio had made it known at a meeting that Mr. Velandia  
18 was an assistant manager, what did he say at that meeting in  
19 terms of Mr. Velandia's responsibilities?

20 A. He didn't say anything about responsibilities. I was,  
21 however, in the restaurant most of the time and I could see  
22 that some of the things that Mr. Pistorio did, whenever he  
23 wasn't present Velandia would do.

24 Q. That was what?

25 A. I don't understand your question.

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Ortiz - cross

1 BY MR. PARKER:

2 Q. What did you see Mr. Velandia do in the restaurant that  
3 Mr. Pistorio did when he was there?

4 A. Just to make sure that on the floor that everything was  
5 correct, seating people in the front; at the end of the  
6 evening, shutting down the computers, making the final report,  
7 and making sure that everything was in order for the following  
8 day.

9 Q. On each occasion that Mr. Velandia did that, did he also  
10 wait tables?

11 A. Yes.

12 Q. Now, you've been a waiter at Remi, correct?

13 A. Yes.

14 Q. About how many tables, on average, do you serve during a  
15 shift at Remi as a waiter?

16 A. First station, it's about nine to twelve tables per waiter.

17 Q. How would you characterize your job, in terms of the  
18 busyness of the job, as a waiter?

19 MR. DELANEY: Objection to the form of the question.

20 THE COURT: The form of the question? The objection  
21 is sustained.

22 Phrase it slightly differently and more generally.

23 BY MR. PARKER:

24 Q. Mr. Ortiz, when you take care of nine to twelve tables  
25 during a shift at Remi, is it busy?

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Ortiz - cross

1 A. Yes.

2 Q. What else do you have time to do when you're taking care of  
3 nine to twelve tables as a waiter, besides taking care of the  
4 tables?

5 A. Nothing. It's busy.

6 Q. When you're taking care of nine to twelve tables as a  
7 waiter during a shift, do you have enough time to take care of  
8 the patrons at those tables?

9 A. You can't give them all your attention because you're so  
10 busy, but you're running around.

11 Q. You testified earlier that Mr. Pistorio had announced at  
12 meetings that if employees had a complaint, they could go and  
13 tell him about it. Do you recall that?

14 A. Yes.

15 Q. Was that said once, or was it said more than once?

16 MR. DELANEY: Objection; leading.

17 THE COURT: Objection sustained.

18 Q. How many times did Mr. Pistorio say that to employees at  
19 meetings at which you were in attendance?

20 A. Plenty of times.

21 Q. As an employee at Remi, how did you feel about the idea  
22 of -- let me rephrase.

23 As an employee of Remi, having heard Mr. Pistorio say  
24 that many times, that an employee could go to him with a  
25 complaint, how did you feel about that procedure at Remi?

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Ortiz - cross

1 MR. DELANEY: Object to the form of that question.

2 THE COURT: I'm having trouble because I'm worried  
3 about the translation, how it translates into Spanish. So I  
4 don't know whether it's a valid consideration or not. I guess  
5 I'll allow the question.

6 THE INTERPRETER: It's allowed?

7 THE COURT: Yes.

8 THE WITNESS: I felt fine. In fact, there were  
9 problems that I had, minor problems, with co-workers about  
10 work, that I would go to Mr. Pistorio about and he would help  
11 resolve them.

12 THE COURT: Didn't you do that before he made any  
13 announcement about going to him with complaints?

14 THE WITNESS: No, it wasn't until after the  
15 announcement was made.

16 THE COURT: Anything else? Go ahead. I wasn't sure  
17 you were finished.

18 MR. PARKER: OK, thank you, Judge.

19 BY MR. PARKER:

20 Q. Are you saying you had issues with other employees before  
21 Mr. Pistorio made that announcement?

22 MR. DELANEY: Objection; leading.

23 THE COURT: Objection overruled.

24 THE WITNESS: Could you repeat the question?

25 THE COURT: I'll ask you to read it back.

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Ortiz - cross

1 (Record read)

2 THE WITNESS: Yes, but work-related problems, like  
3 other employees that didn't want to do their jobs.

4 Q. Are those the types of problems that you brought to  
5 Mr. Pistorio's attention?

6 A. Yes.

7 THE COURT: Before or after he made the announcement?

8 THE WITNESS: After.

9 Q. Did you attend any meetings that were held of employees at  
10 the restaurant?

11 A. One or two meetings.

12 Q. When Mr. Pistorio was the general manager, did he hold any  
13 meetings that you attended, of employees?

14 A. I don't understand the question.

15 Q. You testified yesterday that the touching game was played  
16 at the restaurant.

17 A. Yes.

18 Q. Was the touching game ever discussed at any meeting at Remi  
19 that you attended?

20 A. Yes.

21 Q. When was that meeting?

22 A. After -- sometime later, after 2006, when the posters were  
23 put up, there were some meetings that were held in which it was  
24 discussed that they couldn't -- employees shouldn't touch each  
25 other, men shouldn't touch other men, women shouldn't touch



C46kcar2

Ortiz - cross

1 other women.

2 Q. And where were those meetings held?

3 A. Those meetings were held in the dining room, twice a day.

4 Q. Did you regularly attend those meetings in the dining room  
5 twice a day?

6 A. I wouldn't attend, but I could hear them because  
7 Mr. Pistorio spoke loud.

8 THE COURT: Where were you?

9 THE WITNESS: At the bar.

10 Q. At the meetings where touching was discussed and employees  
11 were told not to touch one another, who spoke? Who said that?

12 A. Mr. Pistorio.

13 Q. Are you aware of any circumstance in which any Remi  
14 employees were ever disciplined for touching one another at the  
15 restaurant?

16 A. Yes.

17 Q. What is your awareness of that?

18 A. There were two busboys whose names I don't recall. There  
19 were two busboys playing in the back of the restaurant,  
20 touching each other, and Pistorio passed by, he saw them and  
21 suspended them for a week.

22 Q. How did you learn that?

23 A. Because everybody spoke about that, and he suspended them.

24 THE COURT: Were you present when he suspended them?

25 THE WITNESS: Yes.

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Ortiz - cross

1 THE COURT: You heard him?

2 THE WITNESS: I didn't hear him say it, but I saw it.

3 THE COURT: How did you know if you didn't hear it?

4 THE WITNESS: Because other employees, other busboys  
5 there, made comments about the situation and the following days  
6 they were not on the schedule for that week.

7 BY MR. PARKER:

8 Q. Did you ever see anything in writing at Remi about  
9 touching?

10 A. I don't remember.

11 THE COURT: You don't remember anything about seeing  
12 anything in writing, or you don't remember whether you saw  
13 anything in writing?

14 You have no recollection of seeing anything in  
15 writing, or you don't remember what the writing was?

16 THE WITNESS: I don't remember whether there was  
17 anything in writing; and I don't remember, if there was, where  
18 it might have been.

19 THE COURT: Well, didn't you say something about  
20 posters earlier?

21 THE WITNESS: Well, yes, those posters were there,  
22 about sexual harassment, they were where you punch in. But as  
23 far as Remi having put something up of their own, that I don't  
24 recall.

25 THE COURT: The posters, who were they put up by?

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Ortiz - cross

1 THE WITNESS: I don't know.

2 THE COURT: How did you know they weren't Remi  
3 posters?

4 THE WITNESS: Well, I mean I have information that  
5 they're from Remi because they're there, they're in the area  
6 where all the regulations are posted, like how much you're  
7 supposed to be paid and things like that.

8 BY MR. PARKER:

9 Q. Mr. Ortiz, if I were to show you your deposition testimony,  
10 might that refresh your memory about whether or not there was a  
11 writing at Remi concerning the touching between employees?

12 A. OK.

13 MR. PARKER: Permission to direct the witness'  
14 attention to his deposition testimony, your Honor?

15 THE COURT: You're going to do it through the  
16 deposition?

17 BY MR. PARKER:

18 Q. Mr. Ortiz --

19 THE COURT: Well, are these in English or in Spanish?  
20 You're going to show it to him or read to him?

21 MR. PARKER: I'm going to read to him. It's a brief  
22 excerpt but I will read to him in English. The deposition  
23 is --

24 THE COURT: What lines are you going to read?

25 MR. PARKER: Page 87 line 21 to 88 line 12. I'm

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Ortiz - cross

1       sorry, line 19.   Actually, line 22.

2               MR. DELANEY:   Where did you say you were going to  
3       start?

4               MR. PARKER:   87 line 21.

5               MR. DELANEY:   Your Honor, I would just request that  
6       the reading start at line 19, 87 line 19.

7               THE COURT:   Start there instead of 21?

8               MR. PARKER:   That's fine, Judge, OK.

9               THE COURT:   I just want to consider this.

10              This is videographed?

11              MR. DELANEY:   Pardon.

12              THE COURT:   This was videographed?

13              MR. DELANEY:   It was videotaped, yes, your Honor.

14              THE COURT:   It was also interpreted?

15              MR. PARKER:   Yes.

16              MR. DELANEY:   In reading the excerpt, your Honor, I  
17       also would object to the extent it would refresh far more than  
18       just the fact of the memo.   It's a pretty substantive excerpt.

19              THE COURT:   Could I see the earlier question?   I'm not  
20       sure how to do that.

21              I don't think -- under what authority can I do that?

22              MR. PARKER:   Your Honor, I think it's to refresh the  
23       witness' recollection as to whether or not there was a writing.

24              MR. DELANEY:   Again, your Honor, I object.   This  
25       excerpt does far more than refresh about the fact in writing.

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Ortiz - cross

1 THE COURT: It seems to me that --

2 MR. PARKER: Well --

3 THE COURT: It seems to me that's not appropriate with  
4 your own witness.

5 MR. PARKER: To refresh your own witness'  
6 recollection? I think that's --

7 THE COURT: Well, refreshing his recollection with  
8 something that --

9 MR. PARKER: Well, he certainly --

10 THE COURT: He said there was a writing, so I don't  
11 see how -- I think he said that there was a writing, a poster.

12 MR. PARKER: I can ask a predicate question to what I  
13 propose to do.

14 THE COURT: Under the rules of evidence, I'm not sure  
15 that I can do that. I don't think I can, unless you show me  
16 some authority. It's bolstering his testimony by his prior  
17 deposition supposedly.

18 MR. PARKER: Judge, if we shorten the excerpt, very  
19 early on in the proposed testimony there's a reference to --

20 THE COURT: I'll have to look.

21 MR. PARKER: If we were to end the testimony literally  
22 in mid-sentence, on page 88 line 3, after the first word on  
23 that line, and it refreshes his recollection, fine; if not,  
24 I'll move on.

25 He's already testified --

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Ortiz - cross

1 THE COURT: I know his testimony is almost a year and  
2 three-quarters ago, about something that happened in 2007 or  
3 '8.

4 MR. PARKER: He's already testified to the first part  
5 of that response, beginning on 87. That's already --

6 THE COURT: I'm sorry?

7 MR. PARKER: Mr. Ortiz has already testified to the  
8 substance of what he says beginning on page 87 at line 24. So  
9 by repeating it, it would not introduce anything new, and --

10 THE COURT: But it's not a prior inconsistent  
11 statement necessarily.

12 MR. PARKER: No, it's simply an effort to refresh  
13 recollection. I believe if I could show him a document or --

14 THE COURT: I'm not sure whether it isn't just  
15 bolstering your own witness. It doesn't seem to me I can do  
16 that unless you point me to something in the rules.

17 I'm looking at Rule 612, but you may have some other  
18 rule. 615 may also apply.

19 (Pause)

20 THE COURT: Maybe we can approach it in a different  
21 manner.

22 MR. PARKER: I'll try that.

23 THE COURT: Supposing -- and I want to hear from both  
24 parties -- that the portion of the deposition that you would  
25 read, you would first show to Mr. Delaney, and you agree on --

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Ortiz - cross

1 if you agree -- on the portion. Then, instead of being read  
2 and translated in open court, it would be given to the  
3 interpreter, who would read and translate that portion only to  
4 him, and he would state whether that refreshes his recollection  
5 about what happened at a meeting with Mr. Pistorio.

6 MR. PARKER: I can show Mr. Delaney that right now.

7 THE COURT: But I don't know whether you both agree to  
8 that. Under Rule 612, that sort of seems to comply.

9 MR. DELANEY: Yes, your Honor, I have no objection to  
10 that procedure. My only objection is going to go to the  
11 probative value of this at this point.

12 THE COURT: There's a question about that too, weight  
13 to be given to it.

14 MR. DELANEY: So even if this goes in, your Honor, I  
15 would say it should be given very little weight.

16 (Pause)

17 MR. PARKER: We have agreement, Judge.

18 THE COURT: You're just going to show it -- mark it,  
19 give it to the interpreter. So you've got to mark whatever it  
20 is as such-and-such for identification.

21 THE INTERPRETER: I have the transcript here.

22 MR. PARKER: I don't have an excerpt but --

23 THE COURT: Just for identification; it wouldn't be  
24 admitted in evidence.

25 MR. PARKER: Sure.

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Ortiz - cross

1 MR. DELANEY: What pages?

2 THE INTERPRETER: I have a copy of the transcript.

3 MR. PARKER: Page 87 and 88.

4 MR. DELANEY: Do you want to mark it for  
5 identification it first?

6 THE DEPUTY CLERK: Judge, do you want it marked for  
7 identification?

8 THE COURT: Yes. It's got to be marked for  
9 identification, so it's clear so the interpreter can see it's  
10 marked out. Is it marked out?

11 MR. PARKER: It's marked as D63.

12 THE COURT: Is it marked out for the interpreter so he  
13 doesn't go beyond or before it?

14 THE DEPUTY CLERK: Judge, do you want to see it first?

15 THE COURT: You're handing what to the interpreter?

16 THE DEPUTY CLERK: Defendants' Exhibit 63.

17 THE COURT: For identification. All right.

18 MR. PARKER: Your Honor, on Defendants' Exhibit 63,  
19 which we have handed to the interpreter, the yellow highlighted  
20 portion is the portion that counsel and I have agreed upon to  
21 be interpreted to the witness.

22 THE COURT: And you understand, just read --

23 THE INTERPRETER: The highlighted areas?

24 THE COURT: The yellow highlighted parts.

25 MR. PARKER: And for the record, your Honor, that's



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Ortiz - cross

1 page 87 line 19 through the first word on page 88 line 3.

2 THE COURT: Yes, all right.

3 THE INTERPRETER: Shall I read it to him now?

4 (Pause for translation)

5 BY MR. PARKER:

6 Q. Mr. Ortiz, has the interpreter read to you the designated  
7 part of your deposition transcript?

8 A. Yes.

9 Q. Having heard that read back to you in Spanish, does your  
10 testimony in that regard refresh your recollection as to  
11 whether or not there were any other writings at Remi concerning  
12 touching of employees?

13 A. Yes.

14 Q. What is your recollection of any such writing or writings?

15 A. Mr. Pistorio had posted in the back of the restaurant,  
16 where the schedules, are a memo indicating that it's prohibited  
17 for men to touch other men and women to touch other women, that  
18 all of it was prohibited, just touching.

19 Q. Do you recall when that memo was posted at Remi?

20 A. I don't remember the date, no.

21 Q. What language was the memo printed in?

22 A. In Spanish and English.

23 Q. Where at Remi specifically was the memo posted?

24 A. In the back part of the dining room, as you go down to the  
25 kitchen in the basement. They always post the schedules there,

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Ortiz - cross

1 and it was next to the schedule.

2 THE COURT: When you say "schedule," what do you mean?

3 THE WITNESS: The work schedule for the employees on  
4 the floor, the busboys, waiters.

5 THE COURT: What approximate time are we talking  
6 about, in relation to -- I'll let you ask. It's not clear to  
7 me what time we're talking about.

8 BY MR. PARKER:

9 Q. You said that Mr. Pistorio posted the memo?

10 A. Yes.

11 Q. So it was sometime during the time Mr. Pistorio was the  
12 general manager of Remi; is that correct?

13 A. Yes.

14 Q. Are you able to recall the year in which this memo was  
15 posted?

16 A. If I'm not mistaken, it was either the end of 2005 or  
17 sometime in 2006, when the memos began.

18 THE COURT: Can you place it in time, in conjunction  
19 with any other events that occurred at Remi?

20 THE WITNESS: Well, Mr. Pistorio noticed that all the  
21 guys were playing around, touching each other, and that's when  
22 he did that, and that's when the touching stopped.

23 THE COURT: How do you know Mr. Pistorio noticed?  
24 What brought to your attention that Mr. Pistorio noticed that  
25 people were touching each other?

C46kcar2

Ortiz - cross

1 THE WITNESS: Well, whenever he went to the office, he  
2 had to pass by the back area in the restaurant, and he would  
3 catch guys playing there.

4 THE COURT: But what brought to your attention that he  
5 had noticed that?

6 THE WITNESS: Well, when we held one of the meetings  
7 and he began to talk about this and mention it, that's when I  
8 realized that he had noticed that it was happening.

9 MR. PARKER: I have nothing further, your Honor.

10 THE COURT: Recross?

11 RECROSS EXAMINATION

12 BY MR. DELANEY:

13 Q. Mr. Ortiz, after Mr. Pistorio put this memo up, the  
14 touching did not stop in the restaurant, did it?

15 A. No.

16 Q. The game continued?

17 A. Yes.

18 Q. And you witnessed people touching after the memo went out,  
19 did you not?

20 A. Yes.

21 Q. You in fact touched other employees after the memo went  
22 out?

23 A. Yes.

24 Q. Were you ever disciplined for touching anyone?

25 A. No, because we were more careful now when we played these

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Ortiz - recross

1 games, so that they wouldn't notice.

2 Q. The touching didn't stop when Mr. Maggi took over either,  
3 did it?

4 A. No.

5 Q. And Mr. Maggi was the new general manager for the  
6 restaurant?

7 A. Yes.

8 Q. He took over after Mr. Pistorio?

9 A. Yes.

10 MR. DELANEY: No further questions, your Honor.

11 THE COURT: Mr. Ortiz, have you had a sexual relations  
12 with Mr. Velandia?

13 THE WITNESS: No.

14 THE COURT: You haven't had an affair with him?

15 THE WITNESS: No.

16 THE COURT: You're excused.

17 If anyone, wants to go into that, I'm not preventing  
18 it.

19 MR. PARKER: No. Thank you.

20 (Witness excused)

21 THE COURT: Next witness? Or you wanted to take a  
22 break now?

23 MR. DELANEY: Actually, I wouldn't mind a five-minute  
24 break, your Honor.

25 (Recess)

C46dcar3

1 THE COURT: Please be seated.

2 Next witness.

3 MR. DELANEY: Your Honor, before the next witness is  
4 called, may I request a sidebar?

5 THE COURT: Sure.

6 (At the sidebar)

7 MR. DELANEY: Your Honor, I understand Mr. Parker  
8 intends to call Carlo Maggi next, who is the current general  
9 manager, and I think I'm going to potentially object to his  
10 testimony on the ground that it is irrelevant and prejudicial.  
11 I believe it is irrelevant largely because Mr. Maggi did not  
12 start at the restaurant until June or July 2008, which was  
13 after when Mr. Sotarriba left the restaurant and it's almost  
14 certainly after any of the conduct at issue was --

15 THE COURT: How about Mr. Caravantes?

16 MR. DELANEY: It is almost certainly after any of the  
17 conduct between Mr. Velandia and Mr. Caravantes.

18 I understand, and I am happy to hear from opposing  
19 counsel, that he may be planning to testify as to the  
20 circumstances of Mr. Caravantes leaving the restaurant. But,  
21 your Honor, we have not made -- we do not have any claim of any  
22 tangible employment action. This is a hostile environment  
23 claim, about the terms and conditions of employment. We have  
24 made no retaliation claim. We are not claiming that there was  
25 any termination in retaliation for the filing of the complaint.

C46dcar3

1           And I believe it's potentially unfairly prejudicial to  
2 my client, because the circumstances of him leaving the  
3 restaurant are incredibly painful for him, as, you know,  
4 Dr. Pearson has talked about. And since we haven't put any of  
5 this at issue, I feel like having him sit through this  
6 testimony of the circumstances of his termination are going to  
7 put him through again what he suffered through and all the  
8 things he suffered through and then in the end it was nothing,  
9 that he had to leave the restaurant anyway.

10           And so for those reasons I believe we should at least  
11 limit his testimony.

12           THE COURT: I will hear from Mr. Parker.

13           MR. PARKER: Judge, this is highly relevant to the  
14 case. He had -- Caravantes has -- there is documented evidence  
15 of him alleging that he was fired from the restaurant, that he  
16 has been caused all sorts of financial hardship, that the  
17 restaurant -- that Remi told him that he would never become a  
18 waiter at the restaurant; that's what he wanted to be. This  
19 testimony goes to all that, and addresses each one of those --

20           THE COURT: Weren't those statements made by  
21 Mr. Pistorio?

22           MR. PARKER: Well, that's what Caravantes alleges.

23           THE COURT: Yes.

24           MR. PARKER: But --

25           THE COURT: So his testimony with Mr. Maggi can't

C46dcar3

1 testify about that?

2 MR. PARKER: No. But Mr. Maggi can testify to what  
3 discussions he and Caravantes had while they were still there.  
4 They worked together for approximately seven weeks. And  
5 Caravantes had at least two discussions with -- the evidence  
6 would show that he had at least two discussions with Maggi  
7 about his job, his employment, and continuing that employment  
8 with Remi.

9 THE COURT: His past employment?

10 MR. PARKER: No. His present employment, and what --

11 THE COURT: I mean by that, his past employment at  
12 Remi, he discussed that with him?

13 MR. PARKER: Well, in the context, yes, in the context  
14 of --

15 THE COURT: What had happened to him?

16 MR. PARKER: No, no --

17 THE COURT: Had he been promised a waiter job?

18 MR. PARKER: No. In the context of going forward,  
19 what job or jobs were made available to him to continue to work  
20 at the restaurant. And it contradicts his testimony that he  
21 was never going to be given a waiter job.

22 His psychologist has come in here and said that, you  
23 know, one of the stressors is financial hardship because he  
24 reported to her that he was fired from Remi. He said in visits  
25 to the Safe Horizons in August and September of 2008, which

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1 counsel put into evidence, he told them that he was laid off  
2 for no apparent reason. These discussions that he had with  
3 Maggi directly contradict those statements, and are highly  
4 relevant to the case.

5 MR. DELANEY: Your Honor, I believe the fact of his  
6 having to leave the restaurant is what Dr. Pearson was  
7 referring to and the fact that he no longer had his job. But I  
8 don't think, again, we put -- Mr. Caravantes certainly didn't  
9 testify that the hardship he is suffering is a result of him  
10 being terminated; he testified it was a result of him not being  
11 at the restaurant anymore and how important the restaurant was  
12 to his identity. The circumstances of his leaving the  
13 restaurant have not been put in issue by the plaintiffs and he  
14 did not testify about it.

15 THE COURT: It goes somewhat to the weight I should  
16 give to Dr. Pearson's testimony.

17 MR. PARKER: Absolutely.

18 THE COURT: I think I have to allow it on damages.  
19 Right?

20 (In open court)

21 MR. PARKER: The defendants call Carlo Maggi, your  
22 Honor.

23 THE CLERK: Please remain standing. Raise your right  
24 hand.

25 CARLO MAGGI,



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called as a witness by the defendants,

having been duly sworn, testified as follows:

THE CLERK: Please state your name and spell your first and your last name slowly for the record, please.

THE WITNESS: My name is Carlo Maggi. And C-a-r-l-o, and my last name Maggi, M-a-g-g-i.

DIRECT EXAMINATION

BY MR. PARKER:

Q. Mr. Maggi, are you employed at Remi Restaurant?

A. Yes.

Q. Where do you live?

A. I live in New York.

Q. With whom do you reside with?

A. Excuse me.

Q. With whom do you reside? Who do you live with?

A. I'm sorry. I live with my wife and my daughter.

Q. Where are you from originally?

A. I'm from Italy.

Q. Where were you educated, Mr. Maggi?

A. In Italy.

Q. Just could you summarize for us, please, your educational background?

A. I have a college degree, comparable to a college degree.

Q. In what area?

A. It's aeronautical.

C46dcar3

Maggi - direct

1 Q. Where did you study?

2 A. In Milan.

3 Q. When did you come to live in the United States?

4 A. 1995, so far, yes.

5 Q. Where did you settle in the United States?

6 A. Chicago, Illinois.

7 Q. Did you attend any schooling in the U.S.?

8 A. Just English courses.

9 Q. Did you become employed after coming to the United States?

10 A. Yes.

11 Q. What was your first job?

12 A. Basically I started as a busser in order to, you know,  
13 going to school in the morning and be able to maintain myself  
14 for my living things.

15 Q. After that first position, what else did you -- who did you  
16 work for?

17 A. I worked for Bice.

18 Q. How do you spell that?

19 A. B-i-c-e.

20 Q. What is Bice?

21 A. It's a restaurant.

22 Q. Was that in Chicago?

23 A. Yes.

24 Q. And just since that time, you said 1995, could you just, in  
25 summary, take us through your work experience up until when you

C46dcar3

Maggi - direct

1 joined Remi Restaurant?

2 THE COURT: When you say a "busser," what is position  
3 is that?

4 THE WITNESS: A busser position basically is the  
5 person in charge of cleaning tables, refilling water, iced tea,  
6 bringing bread to the table.

7 THE COURT: The same as a busboy?

8 THE WITNESS: Yes. Busboy/busser is the terminology.

9 BY MR. PARKER:

10 Q. So what did you do after you were a busboy, what did you  
11 do?

12 A. Basically, I was -- I'm coming from a restaurant family.  
13 So my father is a chef, my mother, my brother. So I was in  
14 Italy exposed; I lived in a restaurant even in Italy. You know  
15 what I mean? So this is my background, even if I choose a  
16 different college partner.

17 I started. I like it. The gentleman who was in  
18 charge of Bice asked me if I was interested to take a position  
19 in the Bice organization, and I say yes. So I had been server  
20 for a short period of time and training as assistant -- head  
21 server or assistant.

22 Q. And what was your last job with Bice?

23 A. My last job for Bice was in 2008, and I was -- two years I  
24 became general manager of Bice, Chicago.

25 Q. What type of restaurant is that?

C46dcar3

Maggi - direct

1 A. Italian.

2 Q. When did you begin your employment with Remi Restaurant?

3 A. With Remi Restaurant, in June, the end of June, the first  
4 week of July. I don't remember the exactly date, but it was in  
5 July -- end of June or first week of July 2008.

6 Q. And what job were you hired to do for Remi?

7 A. General manager.

8 Q. Have you been with Remi now since June --

9 A. Since 2008 I am still employed at Remi Restaurant.

10 Q. And who hired you at Remi?

11 A. At Remi, Mr. Roberto Delledonne.

12 Q. What are your responsibilities as general manager?

13 A. As a general manager, basically the daily operation,  
14 budgeting, scheduling, purchasing, training employees, all the  
15 duties that the general manager I believe in a restaurant has  
16 to do.

17 Q. And what employees work at Remi under you?

18 A. All of them.

19 THE COURT: Is Bice a chain of restaurants?

20 THE WITNESS: Yes. It was.

21 THE COURT: It has restaurants in other cities?

22 THE WITNESS: Yes.

23 THE COURT: All owned by the same company?

24 THE WITNESS: No. I don't remember. I don't know. I  
25 know that Bice is the brand of the name, but I don't know if

C46dcar3

Maggi - direct

1 they are a corporation that control Bice. I don't know.

2 THE COURT: It may be by license.

3 THE WITNESS: Yes. Maybe they have different  
4 partners. That I don't know.

5 BY MR. PARKER:

6 Q. So you said all the employees are under you?

7 A. Yes.

8 Q. What types of employees are under you at Remi?

9 A. All of them. From the chef to the hostess, the dishwasher,  
10 the cleaning crew, I'm the responsible one for them.

11 Q. Do you have any other managers, people who are employed as  
12 managers at Remi?

13 A. Yes.

14 Q. And currently who are they?

15 A. The Chef, Mr. Giovanni Pinato; Ursula Bartel, she is a  
16 manager at Remi; and Rachel Lovaglio Canal, which is my party  
17 manager.

18 Q. And how long have those three individuals been with you at  
19 Remi?

20 A. Since 2008, but they were before me employers and manager  
21 at Remi.

22 Q. Since you joined Remi, who prepares the work schedules for  
23 employees there?

24 A. Me.

25 Q. Does anyone else prepare work schedules?

C46dcar3

Maggi - direct

1 A. No. Since I'm at Remi, no. I am the responsible one.

2 Q. And since you joined, who does the hiring of new employees?

3 A. Me again.

4 Q. Who does the firing of any employees?

5 A. Me.

6 Q. Who is in charge, or who has the authority to impose any  
7 type of disciplinary action on employees?

8 A. Me. It is to be me.

9 Q. Since you joined Remi, have there been any persons employed  
10 in the position of headwaiter?

11 A. Yes.

12 Q. Who have they been?

13 A. When they started, Mr. Velandia was one of them and  
14 Mr. Velandia moved to the party section. So I promote one of  
15 the servers as a head server when they came basically to assist  
16 me in the daily operation.

17 Q. And what is the job -- what are the job duties of a head  
18 server working under you at Remi?

19 A. Working under me at Remi, my assistant head server  
20 basically has to close the restaurant at night for me; this is  
21 one of the tasks. Cleaning -- I mean, checking that the  
22 restaurant is in good standard in term of cleaning, in term  
23 of -- I don't know what light bulbs there is broken; if I don't  
24 see it, he is going to point it to me. Waiting tables; you  
25 know, he is always working in the front of the restaurant

C46dcar3

Maggi - direct

1 waiting tables. So if I need extra help to seating people, he  
2 is going to be available.

3 Checking the book -- you know, there is a reservation  
4 book -- with me. So in the Rialto, you know, sometimes the  
5 restaurant is busy and you missing something, maybe a VIP  
6 coming in or a special customer that requires special  
7 attention, so this is why my assistant, he remind me that, oh,  
8 today we have this, this and this going on. This is what he  
9 does for me.

10 Q. When did Mr. Velandia become -- move into the party area of  
11 the restaurant?

12 A. In July 2008, when I started.

13 Q. And what is his job there?

14 A. His job there --

15 Q. Does he still do that?

16 A. Yes, he still does that.

17 Q. What is his job working --

18 A. His job there is to make sure that people that are booking  
19 parties and renting our party room, they have a pleasant time.  
20 So he is supervising the service.

21 Q. Who actually books the parties into the restaurant?

22 A. My party manager, Rachel Lovaglio Canal.

23 Q. And how are the staff for parties at Remi scheduled to work  
24 at those parties? Could you describe that?

25 A. Sure. Ms. Canal give me the parties that we have in

C46dcar3

Maggi - direct

1 program during the week. And for each party there are a  
2 certain number of people that are required in order to keep our  
3 standard and perform and to make sure, doing the schedule, I  
4 schedule the right amount of people in order to taking care of  
5 the party.

6 Q. Does Mr. Velandia do any of the scheduling of the people  
7 for parties?

8 A. No. Absolutely not. Mr. Velandia is to supervise the  
9 service.

10 Q. Did mr. Velandia have any -- under you have any authority  
11 to discipline employees?

12 A. No.

13 Q. Does Mr. Velandia have any authority to hire or fire  
14 employees?

15 A. No.

16 Q. Has he ever under your supervision?

17 A. Mr. Velandia?

18 Q. Yes.

19 A. Yes, of course.

20 Q. No. Has he ever had that authority under your supervision?

21 A. No. No. No. No. Absolutely not.

22 I understood a different thing. I'm sorry.

23 Q. Do you know Arturo Caravantes?

24 A. Yes.

25 Q. How do you know him?



C46dcar3

Maggi - direct

1 A. When I started to work at Remi, he was the gentleman  
2 responsible for the coffee station.

3 Q. Did you, during the time that you worked together at Remi  
4 with Mr. Caravantes, have any discussions with him?

5 A. No.

6 Q. Did you have any meetings with Mr. Caravantes while he was  
7 employed there?

8 A. Yes.

9 Q. When did you have meetings with him?

10 A. Basically every day during the preshift meeting, and also I  
11 got a few meetings with Mr. Caravantes regarding his position.

12 Q. When did the meetings take place with Mr. Caravantes  
13 regarding his position?

14 A. I don't recall exactly time, but I was in the progress to  
15 change our coffee system, how we preparing coffee. So  
16 Mr. Caravantes' position was probably, you know, in the near  
17 future not available anymore.

18 Q. What were you doing in the restaurant in terms of changing  
19 the coffee station?

20 A. Basically, we changing the coffee machine, the espresso  
21 machine.

22 Q. What was the change?

23 A. It's a big change because we passing from grinding the  
24 espresso, put the espresso in the group, press it, put it in  
25 the machine. We press into a very small plastic capsule that

C46dcar3

Maggi - direct

1 you have only to put in the machine and press a button. So  
2 everybody can do that. The coffee is going to be -- if you do  
3 it, everybody can do it -- it is going to be the same  
4 consistency. The right amount of coffee, the coffee is not  
5 burned. So it's perfect.

6 Q. When you started at Remi, was there anyone else other than  
7 Mr. Caravantes who was working at the coffee station?

8 A. No.

9 Q. If you could turn in -- there should be a binder there that  
10 says "Defendants' Exhibits."

11 A. OK.

12 Q. I am going to ask you, Mr. Maggi, if you could turn to Tab  
13 No. 14 in the exhibit binder.

14 A. OK.

15 Q. There are two pages to the exhibit. Do you know what they  
16 are?

17 A. We are talking about number D-976, right?

18 Q. We'll start with that one. What is D-976?

19 A. The one dated August 12th?

20 Q. Yes. What is it?

21 A. Basically, it is a letter that testified what's happened on  
22 August 12th.

23 Q. Right. And the second page, what is that?

24 A. The second page basically is -- I put in my records in my  
25 file to remind me what's happened that day, with more detail,

C46dcar3

Maggi - direct

1 you know.

2 Q. When did you prepare page 977?

3 A. After August 12, but I don't remember the date.

4 Q. OK. Let's talk about the discussions or meetings that you  
5 had with Mr. Caravantes during the time that you worked with  
6 him about his position.

7 A. Yes.

8 Q. When did you first have a conversation with him about his  
9 position?

10 A. Right after I start. I mean, I don't recall the exactly  
11 day, if it is a week, three days or four days, but right after  
12 I started, one of my goals, one of my, you know, projects was  
13 to changing the coffee system. So I remember that I talked to  
14 him because he was the only one work as coffee -- coffee man.

15 Q. What did you -- what did that first conversation --

16 A. I just told Mr. Caravantes, I just, you know, tried to  
17 notice -- I mean, tried to, you know, let him understand that  
18 this new machine was coming. We are looking forward toward  
19 this new system. So we need to discuss his next position in  
20 our organization.

21 Q. Did he say anything in response at that time, that you  
22 recall?

23 A. No. Actually, no.

24 Q. After that first discussion, did you have any other  
25 meetings or discussions with Mr. Caravantes about his position?

C46dcar3

Maggi - direct

1 A. Yes. They were not really meetings. I would just remind  
2 him that I was, you know, waiting to talk to him officially  
3 because we need to discuss his -- you know, the machine is gone  
4 so time is going by, we need to be prepared. So we need to  
5 discuss.

6 But, you know, it was not really -- I don't know if  
7 he, you know, tried to avoid me or, you know, but, you know, we  
8 keep going. But he knew that the machine was -- has to be  
9 replaced, basically.

10 THE COURT: What language were you discussing it with  
11 him, were you speaking?

12 THE WITNESS: In Spanish. My Spanish is not so, you  
13 know, bad. It is not great, but everybody understand me when I  
14 talk to them.

15 BY MR. PARKER:

16 Q. Did there -- you said there were some discussions about  
17 reminding him that he needed to have a discussion. Did you at  
18 any time have a discussion with him about his job?

19 A. Yes.

20 Q. When did that take place?

21 A. That take place because I --

22 THE COURT: When? He asked when.

23 A. Ah, when? Let me try to recall, because I think it was  
24 August 11th, which was on a Monday. Yes.

25 Q. All right.

C46dcar3

Maggi - direct

1 THE COURT: That took place before this Exhibit 14 was  
2 written?

3 THE WITNESS: Yes. I mean --

4 THE COURT: You say you have Exhibit 14 in front of  
5 you?

6 THE WITNESS: Yes.

7 THE COURT: Dated August 12?

8 THE WITNESS: Yes. I don't know if it is the 11th or  
9 the 12th. I know that it was Monday. It was the following  
10 Monday.

11 THE COURT: Oh, the following Monday? Then it was  
12 after the meeting? After this memo was written?

13 THE WITNESS: That I talked to him? No, I wrote the  
14 memo after I talked to him.

15 MR. PARKER: OK.

16 THE COURT: All right.

17 BY MR. PARKER:

18 Q. I want to direct your attention to that discussion.

19 A. Yes.

20 Q. Whatever date it was.

21 What did you say to him and what did he say to you?

22 A. Basically, he was not on schedule. So he show up at work.  
23 We went into my office. And I told him, what are you doing.  
24 You know, you're not in schedule. You never give me, you know,  
25 any kind of feedback. We need to talk to your next position.

C46dcar3

Maggi - direct

1           So we discuss about his possibility of a move to  
2 another position. I put on the table different options such  
3 as, for example, being a food runner or being part of the  
4 cleaning crew of the restaurant. And basically he refuse it.

5 Q. When you say part of the cleaning crew, what did you tell  
6 him about that possibility?

7 A. Sure. My first offer was to be a food runner, and he  
8 reject it. So I told him, Look, after so many years that you  
9 worked with us, we can find a solution. We can find another  
10 kind of a job for you. I understand that you going to school.  
11 I understand that you have some restriction in time. Perhaps  
12 working as in the cleaning crew is going to give you the time  
13 also to attend your school. Because, you know, a food runner  
14 is a full-time job, you have to have a lot of commitment, and  
15 sometimes, you know, times they are not going with each other,  
16 schools and work; it could be difficult.

17           So I throw also another offer, that he was being part  
18 of the cleaning crew. And he refused that one, too.

19 Q. Did Mr. Caravantes give you any reasons for refusing the  
20 food runner job?

21 A. He told me that he was already -- he performed it in the  
22 past, I guess, this position. He was not interested to going  
23 back. And, actually, he told me that he wants to be a server.

24 Q. How would you -- what's the comparison between the income  
25 that one can earn at Remi as a coffee operator as compared to a

C46dcar3

Maggi - direct

1 food runner?

2 A. Oh, it's a big difference. We are talking about probably  
3 an increase around 40 percent, if it's not 50. And, of course,  
4 depending if the restaurant is busy or not, because it is based  
5 on tips.

6 THE COURT: What about a food runner? What is the  
7 comparison between a food runner and a waiter?

8 THE WITNESS: The difference is not so big in that  
9 case. There is a difference but it is not so evident like  
10 moving from a coffee station to a food runner.

11 THE COURT: What is the difference between a food  
12 runner and a waiter?

13 THE WITNESS: The difference in percentage could be --  
14 it is 25 percent.

15 THE COURT: How much?

16 THE WITNESS: 25 percent.

17 THE COURT: 12?

18 THE WITNESS: No. 25, your Honor.

19 THE COURT: 25 percent?

20 THE WITNESS: Yes.

21 THE COURT: For who?

22 THE WITNESS: The difference between a food runner and  
23 server.

24 The difference between a coffee man to be a food  
25 runner could be 40/45 percent more.

C46dcar3

Maggi - direct

1 BY MR. PARKER:

2 Q. More as a food runner?

3 A. Yeah. I mean, the food runner making more money than a  
4 coffee man.

5 THE COURT: How much would a waiter make more than a  
6 coffee man?

7 THE WITNESS: A lot more, like 65 percent more.

8 BY MR. PARKER:

9 Q. Did Mr. Caravantes respond to your offer about the cleaning  
10 position?

11 A. No. He was not interested.

12 Q. He said he was not interested?

13 A. No. He refused both, actually.

14 THE COURT: What was the difference in pay on the  
15 cleaning position and the coffee man?

16 THE WITNESS: Your Honor, the -- I have to answer your  
17 Honor, right?

18 MR. PARKER: Yes. Yes.

19 THE WITNESS: OK. Your Honor, basically, the coffee  
20 position you have an hourly wage plus tips. The cleaning is  
21 only an hourly wage, that's it; there are no tips involved.

22 THE COURT: Are they both at the same hourly rate?

23 THE WITNESS: No. No. The cleaning, it's more.

24 THE COURT: So what did cleaners make in an average  
25 week? What does a coffee man make in an average week?



C46dcar3

Maggi - direct

1 THE WITNESS: OK. A cleaning, starting at \$9 per hour  
2 or \$10 per hour. It is a 40-hour. So we can do the math. So  
3 we are talking about 360, maybe, before you take the tax out.  
4 Right?

5 The coffee man, he has a percentage on the tips. So  
6 it's around -- if I am recalling good, it was around 3 -- 300  
7 or 350 a week so far.

8 THE COURT: Does he get basic hourly salary, too?

9 THE WITNESS: Yes.

10 THE COURT: Is that included in the 300 --

11 THE WITNESS: No. I'm talking just about the tips.  
12 I'm not talking about the hours.

13 THE COURT: So what would the total be for a cleaning  
14 person and a --

15 THE WITNESS: Your Honor, if you do overtime, of  
16 course it is going to be more. If you work a 40-hour week  
17 at \$9 per hour, it is 360, I believe.

18 THE COURT: If you work a 40-hour week, a cleaning  
19 person would make?

20 THE WITNESS: Around 360.

21 THE COURT: 350?

22 THE WITNESS: No. 360. I mean, 40 hours times 9, so  
23 far it would be that.

24 THE COURT: 360?

25 THE WITNESS: Yes, sir.

C46dcar3

Maggi - direct

1 THE COURT: What would a coffee man make?

2 THE WITNESS: In tips, as I told you, they used to  
3 make around 3/320, 330, 350. It depends on the week because,  
4 of course, it is based on tips. So if the restaurant is busy  
5 and work well, there are more tips to divide because the coffee  
6 gets a percentage.

7 THE COURT: A 40 hour week?

8 THE WITNESS: Yes, sir.

9 THE COURT: 300, somewhere?

10 THE WITNESS: Around 3, 350, 300/350, as, again, it  
11 depends on the week. If it is a very busy week, you might work  
12 more; there are more tips to be divided. So there is a --  
13 potentially he can make more or less.

14 THE COURT: And the hours are the same -- assuming the  
15 hours are the same?

16 THE WITNESS: The hours so far are the same, 40 hours  
17 a week.

18 BY MR. PARKER:

19 Q. Referring to D-14, your memo, it mentions that, "busboy  
20 position advance to food runner and then waiter when it becomes  
21 available." Did that discussion take place?

22 A. Yes, sir.

23 Q. And was that during the same discussion that you've  
24 mentioned?

25 A. Yes.

C46dcar3

Maggi - direct

1 Q. And how did Mr. Caravantes respond to that?

2 A. No. He wants to be a waiter. Basically he wants the  
3 position available right away.

4 Q. Why weren't you willing at the time to just make him a  
5 waiter?

6 A. Because I don't think at the time Mr. Caravantes has the  
7 knowledge and the ability to start him to be a server or a  
8 waiter.

9 Q. Why not?

10 A. Because being a waiter, it takes a few steps, you know.  
11 First of all, you have to be knowledge about the food, which is  
12 very important. You have to be knowledge about wine. You have  
13 to be knowledge about service. You have to have the  
14 appropriate language skills in order to interact with your  
15 customer. And, you know, and all these combine together, they  
16 can be, you know, earned with experience.

17 So you can learn everything. You know, learning, it  
18 is not so difficult, but you need experience in order to put in  
19 place what you learn. If you don't have experience from one  
20 day to another one, it's complicated. It can't -- it can't be.

21 THE COURT: Did you offer him a training period?

22 THE WITNESS: Yes, your Honor. I offered him -- this  
23 is what I offered to him: Be a food runner. In the meantime  
24 we spending time. We train you. First position available as a  
25 server, and when I think you're going to be able to handle it,

C46dcar3

Maggi - direct

1 the position is yours.

2 THE COURT: As a food runner?

3 THE WITNESS: No, as a server. I mean, working as a  
4 food runner and train as a server.

5 So after the training, when I think you reach the  
6 proper level to keep our standard and a position is going to be  
7 available also as a server, I give you the opportunity to be a  
8 server in our organization.

9 THE COURT: If he was being trained, would he be paid  
10 for the time he would be trained --

11 THE WITNESS: Yes.

12 THE COURT: -- as a waiter?

13 THE WITNESS: No. Because, you know, your Honor, a  
14 waiter makes \$4 an hour so far plus the tips. So if you want  
15 to dedicate time to train somebody, at least you have to pay  
16 him the minimum wage. You know what I mean? So it's extra  
17 hours that he's dedicating, too. So if he's training, no tip  
18 part involved. If no tip part involved, we have to find  
19 another sort of payment. You know.

20 THE COURT: So he would get minimum wage, though?

21 THE WITNESS: Probably, yes.

22 We never discuss about that because, you know, he  
23 didn't accept my offer. So there were no meaning for me to  
24 discuss further positions.

25 BY MR. PARKER:

C46dcar3

Maggi - direct

1 Q. Would you turn in the exhibit book to Exhibit D-58.

2 THE COURT: Exhibit 58?

3 MR. PARKER: 58, your Honor. D-58.

4 A. Yes.

5 THE COURT: You are not -- I just want to be sure. 14  
6 is not in evidence?

7 MR. PARKER: Well, I might as well. I will offer it  
8 now.

9 THE COURT: Well, there are two pages.

10 MR. PARKER: Yes.

11 THE COURT: I will hear from plaintiff. Any  
12 objection?

13 MR. DELANEY: I don't have any objection, your Honor.

14 THE COURT: What?

15 MR. DELANEY: I have no objection.

16 THE COURT: No objection. All right. 14 is admitted  
17 in evidence.

18 (Defendant's Exhibit 14 received in evidence)

19 BY MR. PARKER:

20 Q. What is D-58, Mr. Maggi?

21 A. It is a check that we cut for Mr. Arturo Caravantes, dated  
22 Friday, August 15, 2008.

23 Q. What does the check represent?

24 A. This is represented probably the last week that  
25 Mr. Caravantes worked.

C46dcar3

Maggi - direct

1 Q. And take a look at D-59.

2 A. Yes.

3 THE COURT: I'm sorry. I just want to see what you  
4 are looking at.

5 (Pause)

6 THE WITNESS: This one was the --

7 THE COURT: That's the next one.

8 THE WITNESS: (Indicating).

9 THE COURT: I see what you are saying. All right.

10 My looking at the materials indicates it isn't a  
11 check. I mean, I've never seen a check drawn with earnings and  
12 withholdings, etc., on the check.

13 BY MR. PARKER:

14 Q. Perhaps, Mr. Maggi, you could better explain.

15 A. Your Honor, this is a copy that ADP provide electronically  
16 in our records that the check was made for Mr. Caravantes. So  
17 basically it has the amount, the date, and the withholding that  
18 they have on the paystub.

19 THE COURT: All right.

20 Q. What is D-59?

21 A. D-59 is a check that I cut to Mr. Caravantes.

22 I have to go back. Can I explain it?

23 Q. Yes.

24 A. OK. After Mr. Caravantes refused it, I spoke with him and  
25 I ask him to reconsider my offer. Reconsider my offer because

C46dcar3

Maggi - direct

1 after he working in the organization for, I don't know, ten  
2 years or more than ten years, maybe, you know, a little  
3 thinking, you know, could help him out. So I asked  
4 Mr. Caravantes why don't you do that. I pay you a week and we  
5 call it vacation. OK? With this week that you take, think  
6 about it, on my offer, because it's a good offer. Come back to  
7 me after your thinking, and, you know, and we'll see what's  
8 going on from there.

9 So basically I gave him a week to think about my job  
10 offer.

11 THE COURT: And what did you do when you gave him one  
12 week to think about the job? I see. Your testimony is you  
13 then gave him this check?

14 THE WITNESS: Yes. I prepared for a check for him and  
15 I give him this check.

16 THE COURT: All right.

17 BY MR. PARKER:

18 Q. After the conversation that you've been discussing where  
19 you had a discussion about the food runner and the cleaning  
20 position and the training for waiter, did you have any other  
21 discussions with Mr. Caravantes?

22 A. I got a discussion when he came after the week that he was  
23 thinking about my job offer.

24 Q. Where did that discussion take place?

25 A. It took place in my office.

C46dcar3

Maggi - direct

1 Q. When was that?

2 A. It was -- you know, after he took this week to think about  
3 it, basically the following week, I need -- actually, he didn't  
4 actually showing up. I have to call him in order for him to  
5 showing up, because I was waiting for an answer.

6 He came the following day, and we have a discussion in  
7 my office.

8 Q. And was that -- what month was that?

9 A. In August.

10 THE COURT: Let me go back a second.

11 THE WITNESS: Yes.

12 THE COURT: Check 58, that's not \$300?

13 THE WITNESS: No. Your Honor, it is not \$300 because  
14 this is the check -- OK, can I show you? It is going to be  
15 easy --

16 THE COURT: If you can explain.

17 THE WITNESS: No. No. You can check the earnings,  
18 you know.

19 On the check, on the top of 58, if you go on "Regular  
20 Tip," the very last thing -- do you see it? "Regular Tip."  
21 The check, on earnings, it is going to say "Regular Tip."

22 So Mr. Caravantes worked 36 hour and 51. OK? So  
23 multiply that by the hourly rate, 261.05, is his earnings in  
24 hours. We are talking about the hours, your Honor. If you  
25 subtract all the deductions, all the withholdings, the check is



C46dcar3

Maggi - direct

1 162. But on top of that, Mr. Caravantes that week has  
2 \$318.49 in tips. So --

3 THE COURT: I see. All right. Thank you.

4 BY MR. PARKER:

5 Q. And so staying with that same explanation, what does --  
6 looking at D-59, what does that show?

7 A. No. It show that it's only 40 hours. I put it down as a  
8 vacation because I don't have any other -- any other, let's  
9 say, explanation in my computer. So I have to justify it with  
10 something, and I justify it with vacation time. And it's 40  
11 hours, is 286, minus, of course, the withholdings; the check is  
12 248.95.

13 MR. PARKER: Your Honor, I move to admit Exhibits D-58  
14 and -59 in evidence.

15 MR. DELANEY: Your Honor, I only object to the extent  
16 of how they have been characterized. I believe the accurate  
17 way to characterize them would be payroll records, not checks.  
18 So with that qualification on the record, I have no objection.

19 THE COURT: So the exhibits will be called payroll  
20 records.

21 MR. PARKER: I agree with that, Judge. Thank you.

22 THE COURT: All right. Thank you.

23 Exhibits 58 and 59 are admitted in evidence as payroll  
24 records for the dates in question.

25 (Defendants' Exhibits 58, 59 received in evidence)

C46dcar3

Maggi - direct

1 BY MR. PARKER:

2 Q. Mr. Maggi, I want to direct your attention now to the  
3 conversation you said that you had with Mr. Caravantes also in  
4 August in your office.

5 A. The last one?

6 Q. The last one.

7 What did you say and what did he say at that time?

8 A. Well, basically he came in. And very simple. He give me  
9 an ultimatum. So the ultimatum was, look, I thought about it.  
10 I want to be -- you give me back my station, coffee, my  
11 position, or I want to be a server. Nothing in between. So he  
12 didn't give me any space for any, you know, any dealing, any --  
13 there was no space for nothing. It was an ultimatum.

14 I told Mr. Caravantes that I couldn't accept this  
15 ultimatum, because the coffee station was not available  
16 anymore. And in order to be a server, like I said before, you  
17 need experience and you need training. So I told  
18 Mr. Caravantes, unfortunately, I think I have to let you go  
19 because I don't have any other -- I don't know how can I do for  
20 you.

21 So, very good. Mr. Caravantes, you know, take a check  
22 and leaving. He was very aggressive in the end and very  
23 confrontational, too, because I didn't accept his offer, and  
24 that I recall very well. He told me that he was seeking  
25 justice with his lawyer or with -- or that other organization

C46dcar3

Maggi - direct

1 or, you know. And I told Mr. Caravantes, do what you have to  
2 do. You know, I cannot -- what can I do? I cannot stop you to  
3 do anything.

4 So, unfortunately, this is how our working relation  
5 ended.

6 (Continued on next page)

C46kcar4

Maggi - direct

1 BY MR. PARKER:

2 Q. Since you've had the new coffee machines that you  
3 described, has Remi had a coffee station operator?

4 A. No. I change the organization. Basically, they take turn  
5 the, busser take turn, and during the shift today there is one  
6 busser taking the coffee, tomorrow is going to be another one.

7 MR. PARKER: No further questions.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. DELANEY:

11 Q. Now, Mr. Maggi, if you can look at Exhibit D14 again,  
12 Mr. Maggi, and in the first sentence there you see it says on  
13 August 11th Arturo Caravantes was offered a busboy position.  
14 Do you see that?

15 A. Yes.

16 Q. And when you say "was offered," you mean you offered him a  
17 busboy position?

18 A. Yes.

19 Q. Now, do you recall at your deposition that you testified  
20 that you never offered him a busboy position?

21 A. I don't recall.

22 Q. Well, let me hand you your deposition.

23 First, Mr. Maggi, let me ask you, do you recall being  
24 deposed in this case?

25 A. Yes, I do.

C46kcar4

Maggi - cross

1 Q. And do you recall that it was on the 8th of April 2011?

2 A. I don't recall exactly the date, but if you say so.

3 Q. Sounds right, though?

4 A. Yes.

5 Q. Do you recall that you were under oath when you gave that  
6 deposition?

7 A. Yes.

8 Q. And you told the truth at your deposition?

9 A. Yes.

10 Q. I'm going to ask you to turn to page 109 of your  
11 transcript, line 8. I'm going to read that to you.

12 "Q. Why did you offer him the runner position and not a busboy  
13 position? Because I thought that it goes busboy to runner  
14 to --

15 "A. Because my understanding at the time was that he was a  
16 food runner before I came, or he performed some food runner job  
17 before. So if he was a food runner before, why I have to put  
18 him back to the busboy position?

19 Q. Do you recall testifying to that?

20 A. Yes.

21 Q. Does that refresh your recollection that you didn't offer  
22 him a busboy position?

23 A. No, I refresh my memory.

24 Q. Does it refresh your memory that you did not offer him a  
25 busboy position?

C46kcar4

Maggi - cross

1 A. No. I offered him the busboy position at the very last  
2 minute.

3 Q. Did you offer him the busboy position at the second  
4 conversation you had with him?

5 A. No, I offered him this -- after he refuse everything, I try  
6 even with that.

7 Q. So this is when he came back and gave you an ultimatum?

8 A. Yes.

9 Q. Then you offered him the busboy position?

10 A. Yes.

11 Q. But that was after this letter in D14, wasn't it?

12 Was it your testimony before that on August 11th was  
13 when you had the first conversation with him?

14 A. Excuse me?

15 Q. August 11th was when you had the first conversation with  
16 him?

17 A. Yes.

18 Q. And at that conversation you did not offer him a busboy  
19 position?

20 A. No, I don't remember.

21 Q. You offered him a busboy position at the second  
22 conversation?

23 A. Probably, yes.

24 Q. When he gave the ultimatum?

25 A. Yes, probably.

C46kcar4

Maggi - cross

1 Q. So, in fact, your first sentence in D14 is --

2 THE COURT: Not "probably." I want your recollection.

3 THE WITNESS: Your Honor, I don't remember.

4 THE COURT: And the second -- at the meeting when he  
5 came back?

6 THE WITNESS: When he came back, I wrote it; it's  
7 because I offered that. When I prepared this memo, this  
8 letter, your Honor, D14, I probably offered that position --

9 THE COURT: No, no, I don't want "probably."

10 THE WITNESS: OK, so I offered him --

11 THE COURT: I don't want "probably." I want your  
12 memory.

13 THE WITNESS: I'm so sorry, your Honor. So in that  
14 case, I offer also the busboy position too. After he refused  
15 the food runner, after he refused the cleaning, I was probably  
16 tried to find another way to keep the --

17 THE COURT: I don't want "probably." No "probably."

18 THE WITNESS: So I was trying to --

19 THE COURT: Do you remember saying?

20 THE WITNESS: Yes, sir, I remember. So I --

21 THE COURT: You remember saying, "I will offer you a  
22 busboy position"?

23 THE WITNESS: I remember that I offered that position  
24 as a very last thing, in order to keep him with us.

25 THE COURT: The very last thing in all these meetings

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Maggi - cross

1 or the very last thing on --

2 THE WITNESS: No, no, the very last thing, your  
3 Honor --

4 THE COURT: After all the meetings? At the end of all  
5 the meetings?

6 THE WITNESS: At the end of the last meeting, yes,  
7 before I prepared this D14.

8 THE COURT: When did you prepare this?

9 THE WITNESS: August the 11th.

10 THE COURT: Why do you say that?

11 THE WITNESS: Because it's writed on the letter that I  
12 prepared.

13 THE COURT: But the letter you prepared is the date of  
14 the first check you gave him --

15 MR. DELANEY: Your Honor, if I --

16 THE COURT: -- isn't it?

17 THE WITNESS: I think I'm confused. I'm reading the  
18 letter. Can I read the letter just a moment?

19 THE COURT: Yes, read the letter.

20 THE WITNESS: Thank you.

21 I don't recall it.

22 THE COURT: You don't recall what?

23 THE WITNESS: The busboy position, I don't recall it.

24 THE COURT: You don't recall it when?

25 THE WITNESS: I don't recall if I tell him the busboys



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Maggi - cross

1 position August 11th or at the very last conversation on this  
2 point.

3 THE COURT: So you just testified you've offered him  
4 the busboy position at the very last meeting.

5 THE WITNESS: I remember the very last meeting I ask  
6 him if he wants to be also -- you know --

7 THE COURT: You don't remember that?

8 THE WITNESS: No, I remember that, but now I'm confuse  
9 if I offer also that position before.

10 THE COURT: So the memo is wrong maybe?

11 THE WITNESS: I don't remember, your Honor, I tell you  
12 the truth, I don't remember.

13 THE COURT: And that was prepared the day after the  
14 first meeting?

15 THE WITNESS: Yes.

16 BY MR. DELANEY:

17 Q. I'll ask you to turn to page 111 of your deposition, line  
18 2.

19 A. OK.

20 Q. And I will read to you:

21 "Q. OK, and you never offered him a busboy position?

22 "A. That I recall, no."

23 Q. Do you remember giving that testimony? Sir, do you  
24 remember that was the question asked and the answer you gave?

25 A. Yes, I do recall.

C46kcar4

Maggi - cross

1 THE COURT: You better give me the page and line,  
2 Mr. Delaney.

3 MR. DELANEY: Page 111 line 2 through line 4.

4 BY MR. DELANEY:

5 Q. Do you recall at this time that Mr. Caravantes was going to  
6 school? And by "at this time," I mean during August 2011.

7 A. Somebody told me that he was going to school, and he  
8 confirm it too.

9 Q. So you recall that at this time you knew that he was going  
10 to school?

11 A. Yes.

12 Q. And you recall what hours he was going to school?

13 A. No. I'm probably thinking the morning, because his shift  
14 was nighttime at Remi.

15 Q. Do you recall that you offered him the cleaner position so  
16 he could avoid conflicts with his school hours?

17 A. Yes.

18 Q. Do you recall what hours you offered him for the cleaner  
19 position?

20 A. The same hours at night.

21 Q. You offered him a night cleaner position?

22 A. Yes.

23 Q. Can I ask you to turn to Exhibit D58.

24 And you recall testifying about this in response to  
25 Mr. Parker's questions?

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Maggi - cross

1 A. D58 is the check, right?

2 Q. The payroll record.

3 A. Yes.

4 Q. And you testified that his salary income was \$261 a week?

5 A. The gross? Yes.

6 Q. And that his tips were --

7 THE COURT: The gross?

8 THE WITNESS: Yes. The gross salary is 261.05 and the  
9 net was 162.23.

10 MR. DELANEY: That's actually a good clarification.

11 Q. After deductions, his net was 162.23?

12 A. Yes.

13 Q. And then his tips were 318.49?

14 A. For that week, yes.

15 Q. So we can agree that that's \$480?

16 A. For that week, yes.

17 Q. And August is the slow month at the restaurant, correct?

18 A. No.

19 Q. But we can agree that \$480 was more than \$360, correct?

20 A. I was talking 360 tips, wages.

21 Q. No, you said for the cleaner position he would make \$360 --

22 A. I'm sorry, for the cleaner position it was \$360.

23 Q. So at least based upon this one check, it would have been a  
24 significant cut in pay to be a cleaner, would it not?

25 A. Yes.

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Maggi - cross

1 Q. Now, if you turn back to D14, please, if you look at the  
2 last sentence of the second page of D14, and let me know when  
3 you're there. It begins, "Mr. Caravantes then decided to  
4 quit."

5 A. OK.

6 Q. Is it your testimony today that he quit?

7 A. There were not job available and he left.

8 Q. No, that's not what I'm asking. I'm asking, did he quit?

9 A. Yes.

10 Q. OK. So let me ask you to turn back to your deposition,  
11 please.

12 THE COURT: When did he quit?

13 THE WITNESS: The day after our last conversation. So  
14 I guess --

15 THE COURT: How do you know he quit?

16 THE WITNESS: Because he told me that he was leaving.  
17 The job was not available and he was leaving. So this is the  
18 reason why he told me I'm going to go to seek justice with my  
19 lawyer. And he left.

20 BY MR. DELANEY:

21 Q. Well, let me ask you to turn to your deposition again, page  
22 112, please, line 24.

23 THE COURT: I've got to catch up.

24 MR. DELANEY: Page 112 line 24.

25 "Q. So to be clear, did Arturo -- Arturo never said he wanted

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Maggi - cross

1 to leave Remi, did he?

2 "A. No, I told Mr. Caravantes I -- if you don't want to be a  
3 food runner, and if you don't want to be responsible of the  
4 cleaning, I don't have any other position, because the coffee  
5 position is not going to be available. I have to let you go,  
6 I'm sorry."

7 Q. Was that the question you were asked and answer you gave?

8 A. Yes.

9 MR. PARKER: Your Honor, I object to the use of the  
10 testimony. In his direct testimony Mr. Maggi specifically said  
11 those very words that are in this deposition. And if  
12 Mr. Delaney wants to quibble over semantics of whether he quit  
13 because he didn't want the job or whether "I have to let him go  
14 because you don't want the job, Mr. Caravantes," there's no  
15 difference and it's not inconsistent.

16 MR. DELANEY: Mr. Maggi just testified that he --

17 THE COURT: I'll leave that to argument. I'm not  
18 going to make a finding.

19 BY MR. DELANEY:

20 Q. Was that your testimony at your deposition?

21 A. Yes.

22 Q. And did you ever meet Mr. Francisco Sotarriba?

23 A. No.

24 Q. Now, when you first took the job, in June or July of 2008,  
25 were you made aware of Mr. Caravantes' complaint to the

C46kcar4

Maggi - cross

1 Division of Human Rights?

2 A. No, I was not aware of.

3 Q. When you had these meetings with Mr. Caravantes, did you  
4 know that he had filed a complaint with the Division of Human  
5 Rights?

6 A. No. I barely know Mr. Caravantes; I was starting in July.  
7 It happened first week of August, three weeks. I did not have  
8 the advance.

9 Q. Do you know Mr. Velandia?

10 A. Yes.

11 Q. And are you aware of the allegations that are made against  
12 him in this lawsuit?

13 A. Yes.

14 Q. And does he still work for Remi Restaurant?

15 A. Yes.

16 Q. Does he still work for you?

17 A. Yes.

18 Q. Did you promote him to party manager?

19 A. No.

20 Q. Is he still working as a party manager?

21 A. He's a party assistant. My party manager is Rachel  
22 Lovaglio Canal.

23 Q. Is he still working as a party assistant?

24 A. Yes, sir.

25 MR. DELANEY: I have no further questions, your Honor.

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Maggi - cross

1 THE COURT: Any redirect?

2 MR. PARKER: No, your Honor. I'm finished.

3 THE COURT: You're excused.

4 (Witness excused)

5 THE COURT: Next witness?

6 Next witness?

7 MR. PARKER: Roberto Delledonne.

8 ROBERTO DELLEDONNE,

9 called as a witness by the Defendant,

10 having been duly sworn, testified as follows:

11 THE DEPUTY CLERK: Please state your name and spell  
12 your first and your last name slowly for the record, please.

13 THE WITNESS: My first name is Roberto, R-o-b-e-r-t-o,  
14 last name is Delledonne, D-e-l-l-e-d-o-n-n-e.

15 THE COURT: Please go ahead.

16 DIRECT EXAMINATION

17 BY MR. PARKER:

18 Q. Mr. Delledonne, where do you reside?

19 A. Sorry?

20 Q. Where do you reside? Where do you live?

21 A. I live in Rye Brook, New York.

22 Q. And whom do you live with?

23 A. I living with my wife and my two kids.

24 Q. How long have you lived there?

25 A. I live there for about five years. Actually, for 11 years,

C46kcar4

Delledonne - direct

1 but I change house.

2 Q. Where are you from originally?

3 A. I'm from Italy.

4 Q. When did you begin living in the United States?

5 A. In 1993.

6 Q. Where were you educated?

7 A. In Italy.

8 Q. And just could you summarize your educational background  
9 for us?

10 A. Yes. I am equal to college, I have an accountant degree in  
11 college. And that's about it.

12 Q. Did you work after college?

13 A. Yes, I did.

14 Q. What did you do first after college?

15 A. I work as an accountant for a company I started in Italy  
16 and after I move in Africa, I work for about six years over  
17 there. And after, I move in France for a few more years. And  
18 finally, in 1993, I came here.

19 Q. What was your first job when you came to the United States?

20 A. I was a restaurant manager.

21 Q. What did you manage?

22 A. I manage a restaurant in Los Angeles called Cafe Med. We  
23 open it, we opened the restaurant, and I managed for about a  
24 year and a half.

25 Q. What did you do after that?



C46kcar4

Delledonne - direct

1 A. After that, I came to New York and I work for a company  
2 called Italian RG. It was restaurant management, and I was the  
3 corporate controller of the company.

4 Q. Do you remember approximately the years when you did that?

5 A. Yes. From '94, end of '94, until 2007.

6 Q. When you say corporate controller, what basically were your  
7 job duties?

8 A. I was bookkeeping the corporation. The corporation owns --  
9 we were managing -- it was manage like five restaurants, and I  
10 was doing, I was in charge of what the accounting was, as far  
11 as bookkeeping.

12 Q. Are you familiar with the company called 53rd Street  
13 Partners LLC?

14 A. Yes, sir.

15 Q. And what is 53rd Street Partners LLC?

16 A. It's the corporation who owns the Remi Restaurant.

17 Q. What is your job today?

18 A. Today I work at Remi Restaurant.

19 Q. Since when -- do you work there full time?

20 A. Yes.

21 Q. You said 53rd Street Partners is the owner of Remi  
22 Restaurant. When did 53rd Street Partners become the owner of  
23 Remi Restaurant?

24 A. In 2005, when 53rd Street purchased Remi Restaurant.

25 Q. And was it called Remi before you purchased it?

C46kcar4

Delledonne - direct

1 A. Yes.

2 Q. It continued the name?

3 A. It was Remi Restaurant, and it was another corporation.

4 Your question is?

5 Q. You kept the name?

6 A. We kept the name, yes.

7 THE COURT: You bought the name?

8 MR. PARKER: Bought the name, absolutely.

9 Q. When 53rd Street Partners became the owner of Remi  
10 Restaurant, what was your role with 53rd Street Partners?

11 A. I was one of the three partners.

12 Q. And the names of the other two were what?

13 A. One name is Stefano Fritella, the other one is Frank  
14 Tancredi, he was Frank Tancredi.

15 Q. And today, who are the partners in 53rd Partners?

16 A. I'm by myself; I have no partners.

17 Q. When did that change take place?

18 A. It change last year, two thousand -- I would say 2011, at  
19 the beginning of 2011.

20 Q. Do you remember when in 2005 53rd Street Partners took over  
21 the ownership of Remi?

22 A. April 11.

23 Q. And at that time, what was your employment?

24 A. I was still working for the Italian RG as a corporation --  
25 as a corporate accountant, a corporate bookkeeper or corporate

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Delledonne - direct

1 controller, whatever you call.

2 Q. And where was your job?

3 A. In Manhattan.

4 Q. You said you left that job in 2007?

5 A. Yes.

6 Q. While you were still working in that position, from April  
7 of 2005 until you left in 2007, what was your role with Remi  
8 Restaurant?

9 A. I was still partner, and I was taking care of the  
10 accountings, as far as bookkeeping.

11 Q. When 53rd Street Partners took over Remi, who became the  
12 manager?

13 A. The general manager, you mean?

14 Q. Yes.

15 A. It's Mr. Francesco Pistorio.

16 Q. And had Mr. Pistorio been with Remi prior to April of 2005?

17 A. No.

18 Q. What about the other employees of Remi, who worked there  
19 before you took over the ownership, or 53rd Street Partners  
20 took over the ownership, did they leave, did they remain, did  
21 some leave, some leave? How did that work?

22 A. They all stayed beside the general manager -- the former  
23 general manager move away with the former owner, and we replace  
24 him with our general manager, Mr. Francesco Pistorio.

25 Q. Again, taking the time frame from April of 2005 until when

C46kcar4

Delledonne - direct

1 you left your other position in 2007, how much time were you  
2 spending at Remi during that time?

3 A. I would say one hour or two every day, from 2005 until I  
4 finally move in 2008. I was going in just to check the place,  
5 to talk with the manager, or we go to get the invoices, you  
6 know, to do basic things.

7 Q. What were the job duties of Mr. Pistorio as general manager  
8 during that time?

9 A. Mr. Pistorio, as far as general manager, he was in charge  
10 of the all operation, he was running the day operation, he was  
11 taking care of the needs of the restaurant. If there was a  
12 problem, he was there, and he was in charge of the relationship  
13 with the clients, the customer, with the relationship with the  
14 hotel.

15 The restaurant business is a very wide -- there is a  
16 lot of different activity you have to do as far as general  
17 manager, besides taking care of your own -- or your stuff. You  
18 have to take care of the customer or potential customer and go  
19 to represent the restaurant in the hotels, because in Manhattan  
20 the hotels, they are very important to the restaurant business.  
21 They give you -- you know, they send you the people all the  
22 time, and you really need to please the people when they come,  
23 because when they go back, they report back to the hotel.

24 So as far as GM, he has to take care of this, to make  
25 sure that the hotel were happy with us and make sure the

C46kcar4

Delledonne - direct

1 employee were OK; any problem, any little thing he was taking  
2 care of it inside the restaurant. He was in charge of ordering  
3 wine, he was overlooking the kitchen, he was overlooking the  
4 to-go operation we have, he was overlooking the parties. He  
5 was doing the whole thing.

6 THE COURT: Besides you, what about Mr. Tancredi, what  
7 did he do?

8 THE WITNESS: At Remi you mean?

9 THE COURT: What?

10 THE WITNESS: At Remi Restaurant?

11 THE COURT: At the restaurant.

12 THE WITNESS: At Remi Restaurant he was the CPA, he's  
13 certified accountant and was doing everything concerning taxes,  
14 like tax return, sales taxes, any kind of tax.

15 THE COURT: What about the other partner?

16 THE WITNESS: The other partner? He had no role in  
17 the company.

18 THE COURT: So o one supervised or watched how  
19 Mr. Pistorio did his job?

20 THE WITNESS: I was.

21 THE COURT: What?

22 THE WITNESS: I was.

23 THE COURT: No partner watched him?

24 THE WITNESS: Beside me, no.

25 THE COURT: You were only there one hour a day?

C46kcar4

Delledonne - direct

1 THE WITNESS: Yeah, two hours a day.

2 THE COURT: So you couldn't tell whether the customers  
3 were being well treated or not?

4 THE WITNESS: I got the feedback from him all the  
5 time. And we talk a lot with Mr. Pistorio. All the time I  
6 used to go see him, we had an hour of conversation, and he was  
7 keeping me updated about if there was any problem, anything  
8 else. But what it is, Mr. Pistorio is a professional guy, he  
9 knows his way around, and we basically trust him very much. So  
10 there was not really a reason to doubt about his performance at  
11 the restaurant.

12 THE COURT: But no one of you partners had any  
13 experience in managing a restaurant, right?

14 THE WITNESS: No, I did. I work for a restaurant  
15 business for many years and one of the partners, Stefano  
16 Fritella, is also -- also, if he had no part in Remi, he had  
17 part in other restaurants. So Mr. Pistorio worked for  
18 Mr. Fritella in another location. And when he came,  
19 Mr. Fritella knew Mr. Pistorio, he knew his capacity of what he  
20 could do.

21 THE COURT: But your skill is in accounting, no?

22 THE WITNESS: Yes, but I work in restaurant for many  
23 years and I develop restaurant skills in day-to-day operation,  
24 you...

C46kcar4

Delledonne - direct

1 BY MR. PARKER:

2 Q. At the time that you took over Remi, in April of 2005, what  
3 other employees were employed in management positions there?

4 A. Management? Besides Mr. Pistorio? He moved in with us.

5 And there was Ms. Rachel Lovaglio Canal, which is the party  
6 manager; was Ursula Bartel, she was in charge of the to-go; and  
7 the chef, Giovanni Pinato, move in as well with us.

8 Q. Are each of those persons still employed at Remi?

9 A. All of them, yes.

10 Q. Are they employed in the same jobs that they had then?

11 A. Yes.

12 THE COURT: All right, I guess it is time to break and  
13 we will break until 9:30 on Monday. Have a good Easter.

14 MR. PARKER: Have a good Easter, your Honor. Thank  
15 you.

16 MR. DELANEY: Happy Easter, your Honor.

17 (Adjourned to April 9, 2012 at 9:30 a.m.)

18 \* \* \*

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## PLAINTIFF EXHIBITS

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## DEFENDANT EXHIBITS

Exhibit No.	Received
14 . . . . .	.1111
58, 59 . . . . .	.1115